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7 JOSEPH EMMANUEL GAXIOLA,
8 Plaintiff,
9 v.
10 E. BORLA, et al.,
11 Defendants.

Case No. [23-cv-02196-WHO](#) (PR)

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17 **ORDER DISMISSING THE
COMPLAINT WITH LEAVE TO
AMEND**

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23 **INTRODUCTION**

24 Plaintiff Joseph Emmanuel Gaxiola alleges unrelated constitutional and statutory
25 claims against different defendants at Salinas Valley State Prison. His 42 U.S.C. § 1983
26 complaint containing these allegations is now before me for review pursuant to 28 U.S.C.
27 § 1915A(a).

28 Gaxiola raises a number of unrelated claims against at least eleven defendants.
Because this falls afoul of federal pleading rules, the complaint is DISMISSED with leave
to file an amended complaint on or before **November 20, 2023**. Failure to file a proper
amended complaint by November 20, 2023, may result in dismissal of this action under
Federal Rule of Civil Procedure 41(b) for failure to prosecute. I will rule on Gaxiola's
motion for the appointment of counsel after I have reviewed his amended complaint.

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30 **DISCUSSION**

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32 **A. Standard of Review**

33 A federal court must conduct a preliminary screening in any case in which a
34 prisoner seeks redress from a governmental entity or officer or employee of a
35 governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any

1 cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim
2 upon which relief may be granted or seek monetary relief from a defendant who is immune
3 from such relief. *See id.* § 1915A(b)(1), (2). Pro se pleadings must be liberally construed.
4 *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988).

5 A “complaint must contain sufficient factual matter, accepted as true, to ‘state a
6 claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
7 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial
8 plausibility when the plaintiff pleads factual content that allows the court to draw the
9 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting
10 *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal
11 conclusions cast in the form of factual allegations if those conclusions cannot reasonably
12 be drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55
13 (9th Cir. 1994).

14 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
15 elements: (1) that a right secured by the Constitution or laws of the United States was
16 violated, and (2) that the alleged violation was committed by a person acting under the
17 color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

18 B. Legal Claims

19 In his complaint, Gaxiola alleges Eighth Amendment, due process, and Americans
20 With Disabilities Act (ADA) claims against at least eleven defendants at Salinas Valley
21 State Prison, including prison guards, medical staff, and grievance reviewers. The
22 allegations relate to a prison disciplinary action; a prison guard shutting off water during a
23 shower; retaliation; denial of medical treatment and equipment; and denial of transfer to
24 ADA housing and various ADA accommodations. (Compl., Dkt. No. 1 at 1-36.)

25 Gaxiola’s claims are based on different incidents involving different defendants
26 over two years. This is improper. He may not bring unrelated claims in one suit. Federal
27 pleading rules require that claims be based on “the same transaction, occurrence, or series
28 of transactions or occurrences” and pose a “question of law or fact common to all

1 defendants.” Fed. R. Civ. P. 20(a)(2). In his amended complaint, he must decide which
2 set of claims he wishes to pursue. He may then allege facts that give rise to that claim and
3 any other claim that is closely related to the facts involved, as required by Rule 20(a)(2).

4 In addition, Gaxiola may wish to consider the following when he amends his
5 complaint. His claims against grievance reviewers will be difficult to sustain. Mere
6 involvement in reviewing an inmate’s administrative grievance does not necessarily
7 demonstrate awareness of an alleged violation, or contribute to the underlying violation.
8 *George v. Smith*, 507 F.3d 605, 609 (7th Cir. 2007). “Only persons who cause or
9 participate in the violations are responsible.” *Id.* “Ruling against a prisoner on an
10 administrative complaint does not cause or contribute to the violation.” *Id.*

11 By the same token, his claims against supervisors will be difficult to sustain. There
12 is no respondeat superior liability under § 1983, which means that a supervisor cannot be
13 held simply for being a supervisor. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). It
14 is not enough that the supervisor merely has a supervisory relationship over the
15 defendants; the plaintiff must show that the supervisor “participated in or directed the
16 violations, or knew of the violations and failed to act to prevent them.” *Id.* Furthermore,
17 supervisor defendants are entitled to qualified immunity where the allegations against them
18 are simply “bald” or “conclusory” because such allegations do not “plausibly” establish the
19 supervisors’ personal involvement in their subordinates’ constitutional wrong. *Iqbal*, 556
20 U.S. at 675-83.

21 CONCLUSION

22 The complaint is DISMISSED with leave to file an amended complaint on or before
23 **November 20, 2023**. The amended complaint must include the caption and civil case
24 number used in this order (23-02196 WHO (PR)) and the words FIRST AMENDED
25 COMPLAINT must be written on the first page. The amended complaint must also appear
26 on this Court’s form, a copy of which will be sent to him. Because an amended complaint
27 completely replaces the previous complaints, plaintiff must include in his first amended
28 complaint all the claims he wishes to present and all of the defendants he wishes to sue.

1 See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate
2 material from the prior complaint by reference. Failure to file a proper amended complaint
3 by November 20, 2023, may result in dismissal of this action under Federal Rule of Civil
4 Procedure 41(b) for failure to prosecute.

5 **IT IS SO ORDERED.**

6 **Dated:** October 10, 2023

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8 WILLIAM H. ORRICK
9 United States District Judge

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United States District Court
Northern District of California